

Please Direct All Correspondence to Customer Number **20995**

Applicants : Mohamed Diab, et al.  
App. No : 10/791,683  
Filed : March 2, 2004  
For : SIGNAL PROCESSING  
APPARATUS AND METHOD  
Examiner : Eric Frank Winakur  
Art Unit : 3768

Confirmation No.: 2591

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TRANSMISSION

I hereby certify that this correspondence,  
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via the EFS Web server on:

August 7, 2008

(Date)

John M. Grover, Reg. No. 42,810

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Evidence of Power of Attorney**

In a recent phone conference regarding the Applicants' Terminal Disclaimer filed on July 14, 2008 ("the First Terminal Disclaimer"), the Examiner requested evidence showing that the undersigned attorney of record is empowered to act on behalf of the Assignee, by virtue of a Power of Attorney and Pursuant to 37 C.F.R. 1.321(a). As evidence thereof, the following documents are attached hereto:

- (1) Declaration by the Applicants as filed in U.S. Patent Application No. 08/834,194 (the "Parent"), which is a parent of the above-captioned continuation application (EXHIBIT A);
- (2) Assignment from the Applicants to the Assignee as filed in the Parent of the above-captioned continuation application (EXHIBIT B);
- (3) Statement under 37 C.F.R. § 3.73(b) (EXHIBIT C);
- (4) Revocation and General Power of Attorney executed August 5, 2004 and appointing Knobbe, Martens, Olson & Bear, LLP, Customer No. 20,995, as attorneys and agents for the Assignee in relation to all patent applications assigned to the Assignee, where one of the attorneys associated with Customer No. 20,995 is the undersigned (EXHIBIT D); and

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- (5) A Terminal Disclaimer ("the Second Terminal Disclaimer") signed by the undersigned attorney of record (EXHIBIT E).

Applicants submit that the above-referenced documents establish that the undersigned attorney of record is empowered to act on behalf of the Assignee by virtue of a Power of Attorney and pursuant to 37 C.F.R. 1.321(a).

As such, the Applicants respectfully request that the attached Second Terminal Disclaimer be approved and recorded.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR LLP

Date: August 7, 2008

By: 

John M. Grover  
Registration No. 42,610  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404

# Exhibit A

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**DECLARATION - USA PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled **IMPROVED SIGNAL PROCESSING APPARATUS AND METHOD**; the specification of which is attached hereto;

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above;

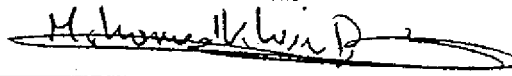
I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56;

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issued thereon.

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Full name of first inventor: **Mohamed K. Diab**

Inventor's signature \_\_\_\_\_



Date 14th of April 1997

Residence: **26945 Diamond, Mission Viejo, California 92691**

Citizenship: **United States**

Post Office Address: **Same as above**

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Full name of second inventor: Rex McCarthy

Inventor's signature Rex McCarthy

Date 14<sup>th</sup> of April 1997

Residence: 22832 Buendia, Mission Viejo, California 92691

Citizenship: United States

Post Office Address: Same as above

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Send Correspondence To:  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
620 Newport Center Drive  
Sixteenth Floor  
Newport Beach, CA 92660-8016

Direct Telephone Calls To:  
Jerry T. Sewell

(714) 760-0404

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970414

# Exhibit B

# Not for Recordation

Application No.: Unknown  
Filing Date: Herewith

PATENT  
Client Code: MASIMO.056A  
Page 1

## ASSIGNMENT

WHEREAS, We, Mohamed K. Diab, a United States citizen, residing at 26945 Diamond, Mission Viejo, California 92691, and Rex J. McCarthy, a United States citizen, residing at 22832 Buendia, Mission Viejo, California 92691, have invented certain new and useful improvements in a IMPROVED SIGNAL PROCESSING APPARATUS AND METHOD for which we have executed an application for Letters Patent in the United States, on even date herewith;

AND WHEREAS, Masimo Corporation (hereinafter "ASSIGNEE"), a Delaware Corporation, with its principal place of business at 23361 Madero Street, Suite 100, Mission Viejo, California 92691, desires to acquire the entire right, title, and interest in and to the said improvements and the said Application:

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) each to us in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, we, the said inventors, do hereby acknowledge that we have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, the entire right, title, and interest throughout the world in, to and under the said improvements, and the said application and all divisions, renewals and continuations thereof, and all Letters Patent of the United States which may be granted thereon and all reissues and extensions thereof, and all rights of priority under International Conventions and applications for Letters Patent which may hereafter be filed for said improvements in any country or countries foreign to the United States, and all Letters Patent which may be granted for said improvements in any country or countries foreign to the United States and all extensions, renewals and reissues thereof; and we hereby authorize and request the Commissioner of Patents of the United States, and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patent for said improvements to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND WE HEREBY covenant and agree that we will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to us respecting said improvements, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper patent protection for said improvements in all countries.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 14<sup>th</sup> day of April, 1997.

*Mohamed K. Diab*

Mohamed K. Diab

STATE OF CALIFORNIA

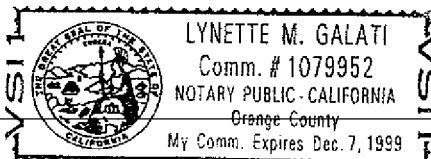
COUNTY OF ORANGE

} ss.

On 4.14.97, before me, Lynette Galati personally appeared Mohamed K. Diab personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



*[Signature]*

Signature

# Not for Recordation

PATENT

Application No.: Unknown

Client Code: MASIMO.056A

Filing Date: Herewith

Page 2

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 14 day of April, 19 97.

Rex J. McCarthy  
Rex J. McCarthy

STATE OF CALIFORNIA

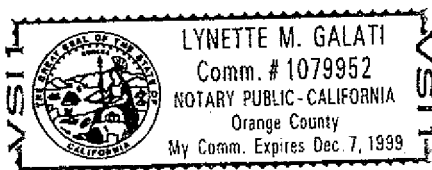
COUNTY OF ORANGE

} ss.

On 4.14.97, before me, Lynette Galati personally appeared Rex McCarthy personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]



[Signature]  
Signature

# Exhibit C

**STATEMENT UNDER 37 CFR § 3.73(b)  
ESTABLISHMENT OF ASSIGNEE**

Applicant : Mohamed Diab et al.  
App. No. : 10/791,683  
Filed : March 2, 2004  
For : SIGNAL PROCESSING APPARATUS AND METHOD  
Examiner : Eric Frank Winakur  
Group Art Unit : 3768

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This document is being filed with a copy of a "Revocation and General Power of Attorney" signed by the Assignee and sets forth the chain of title of the above-identified application.

Masimo Corporation is the Assignee of the entire right, title, and interest of the above-referenced application by virtue of:

The Assignment from the inventor(s) to the Assignee recorded in the United States Patent and Trademark Office on April 15, 1997, at Reel 8528, and Frame 0483.

The undersigned is an agent of Customer Number 20995 and is authorized to act on behalf of the Assignee. Please recognize or change the correspondence address for the above-identified application to **Customer No. 20995**.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 7, 2008

By: 

John M. Grover  
Registration No. John M. Grover  
Attorney of Record  
Customer No. 20995  
(949) 760-0404

# Exhibit D

**REVOCATION  
AND  
GENERAL POWER OF ATTORNEY**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

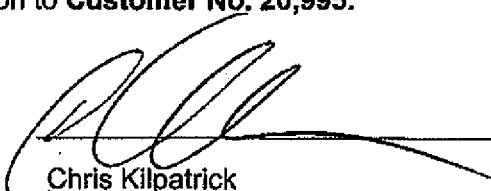
The undersigned is an empowered representative of the Assignee and hereby appoints the registrants of Knobbe, Martens, Olson & Bear, LLP, **Customer No. 20,995**, as attorneys and agents to represent the Assignee before the United States Patent and Trademark Office (USPTO) in connection with any and all patent applications assigned to the Assignee according to the USPTO assignment records or assignment documents supplied with an accompanying Statement Under 37 CFR § 3.73(b). This appointment is to be to the exclusion of the inventor(s) and his attorney(s) in accordance with the provisions of 37 CFR § 3.71.

All previous powers of attorney for the below named Assignee are hereby revoked.

A Statement Under 37 CFR § 3.73(b), signed by a registrant of Knobbe, Martens, Olson & Bear, LLP, is attached setting forth a full chain of title for the subject application owned by the Assignee named below.

Please recognize or change the correspondence address for the above-identified application to **Customer No. 20,995**.

By:

Name:  Chris Kilpatrick

Date:

8/5/04

Title: V.P. Business Development  
and General Counsel

Assignee: MASIMO CORPORATION

Address: 40 Parker, Irvine, CA 92618

# Exhibit E

Please Direct All Correspondence to Customer Number **20995**

**TERMINAL DISCLAIMER UNDER 37 CFR § 1.321**

Applicants : Mohamed Diab, et al.  
App. No : 10/791,683  
Filed : March 2, 2004  
For : SIGNAL PROCESSING  
APPARATUS AND METHOD  
Examiner : Eric Frank Winakur  
Art Unit : 3768

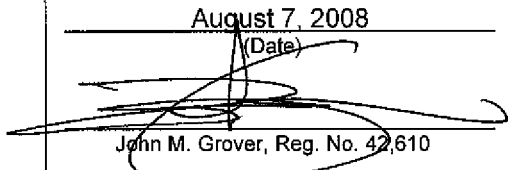
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via the EFS Web server on:

August 7, 2008

(Date)

  
John M. Grover, Reg. No. 42,610

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

***Disclaimer by Assignee***

Assignee, Masimo Corporation ("Assignee"), hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the above-identified application which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,067,462, and hereby agrees that any patent so granted on the above-identified application shall be enforceable only for and during such period that such patent so granted on the above-identified application and U.S. Patent No. 6,067,462 are co-owned. This agreement extends to any patent granted on the above-identified application and shall be binding on Assignee, its successors, or assigns.

Assignee does not disclaim the terminal part of any patent granted on the above-identified application prior to the earlier of (i) the expiration date of the full statutory term of U.S. Patent No. 6,067,462 and (ii) the expiration date of the full statutory term of any patent issuing from the above-identified application, in the event that either one later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. § 1.321(a), has

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**Please Direct All Correspondence to Customer Number 20995**

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all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term.

***Right of Assignee and Ownership***

In accordance with 37 C.F.R. § 3.73(b), Assignee represents that it is the owner of a 100 percent interest in the above-identified application and co-owned Patent No. 6,067,462 by virtue of the assignments recorded at Reel No. 008528, Frame No. 0483 and at Reel No. 012822, Frame No. 0200 by the Assignment Branch of the Patent and Trademark Office. The Assignee represents that, to the best of Assignee's knowledge and belief, title is in the Assignee seeking to take action.

***Empowerment of Attorney***

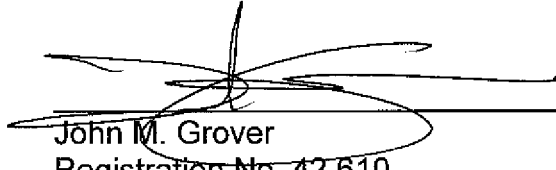
Pursuant to 37 C.F.R. 1.321(a) the undersigned attorney of record is empowered to act on behalf of the Assignee, by virtue of a Power of Attorney.

Because the Terminal Disclaimer previously filed on July 14, 2008 and subsequently disapproved by the USPTO was accompanied by the \$130 fee set forth in 37 C.F.R. § 1.20(d), the Assignee submits that no fee is required. However, if a fee is deemed due, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR LLP

Dated: August 7, 2008



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John M. Grover  
Registration No. 42,610  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404